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APPLICATION NO. 05/736,305	FILING DATE 02/07/97	FIRST NAMED INVENTOR KILIAN	ATTORNEY DOCKET NO. 00105-10015
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CHICAGO IL 60601

IM21/0319

EXAMINER TRAN, L. T.

ART UNIT 1751	PAPER NUMBER
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DATE MAILED: 03/19/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.
08/796,305

Applicant(s)
Kilibwa

Examiner
Lien Tran

Group Art Unit
1761



☒ Responsive to communication(s) filed on Feb 7, 1997

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-29 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-29 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. A telephone call was made on March 11, 1998 to applicant's attorney Mr. Richard T. Roche to request an election to a restriction requirement. However, upon further consideration, it was determined that the different independent claims are not drawn to different patentably distinct inventions. Thus, the restriction requirement is withdrawn and all the claims will be examined

2. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

3. Claims 1-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite. The body of claim 1 is not commensurate with the preamble because there is no recitation of the step of making the baked product. The baked product is not made by just forming a baking dough.

In claims 5-8, "said bread dough" lacks antecedent basis.

In claim 12, the term "intense" is indefinite because it is a relative term; there is no comparative basis.

In claim 13, it is unclear why the word "Datem" is capitalized; is it a tradename? If "Datem" is a tradename, it can not be in the claim because this makes the claim indefinite.

Claim 14 has the same problem as claim 1.

Claim 17 has the same problem as claim 1.

Claim 20 has the same problem as claim 1.

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4. Claim 1, 14, 17, 20 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for specific amounts of polydextrose, fiber and glycerol monostearate, does not reasonably provide enablement for any and all amounts. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to carry out the invention commensurate in scope with these claims.

In the independent claims, applicant claims methods for making baked products by combining flour, water, yeast and polydextrose with fiber or glycerol monostearate. While flour, water and yeast are conventional ingredients for baked product and can be varied depending on the product, the polydextrose alone or polydextrose in combination with fiber or glycerol monostearate is added to obtain specific function and the claims do not teach one skilled in the art the amounts to use. One reading the claims does not know the appropriate amounts to use or what the desired end function is. The claims are not enabling for all and any amount. The same is true with the fiber and the glycerol monostearate.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4, 9-12 and 25-26 rejected under 35 U.S.C. 102(b) as being anticipated by Engelbrecht et al.

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Engelbrecht et al. disclose a method of making a baked product by forming a baking dough by combining flour, yeast, water and polydextrose (see col. 3 lines 58 and table I). The amount of polydextrose used is from above 2% to 15% (see col. 3 lines 50-51 and the claims); the amounts of polydextrose in claims 2-3,10-11 and 25-26 fall within the range disclosed. The baked product is a bread and contains sugar (see col. 4) which meets the limitation of claims 4,9,12.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 5-8,13,17-19 and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engelbrecht et al. in view of The Encyclopedia of Chemical Technology.

Engelbrecht et al. do not disclose adding enzymes and mono or diglyceride, the process as in claims 5-8.

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The textbook "The Encyclopedia of Chemical Technology" teaches that is common to add surfactants such monoglyceride to yeast-raised dough product such as bread to function as crumb softener or dough strengtheners. It also teaches to add enzyme such as amylase to dough to improve volume, texture and keeping properties. Enzyme is added to bread to slow down the firming of bread. Proteolytic enzymes can also be used to reduce mixing time of dough and to make dough more pliable.

It would have been obvious for one skilled in the art at the time of the invention to add enzyme and monoglyceride to the Engelbrecht et al. dough for the purposes and benefits taught by the textbook. The process by which the bread is made in claims 5-8 are conventional processes for making bread and would have been obvious to one skilled in the art. The amount of enzyme used can be determined by one skilled in the art through routine experimentation.

10. Claims 14-16 and 20-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dartey et al.(4678672) in view of Hay Jr. et al. and the textbook "The Encyclopedia of Chemical Technology".

Dartey et al. disclose a method of making baked product by combining flour, polydextrose, emulsifier, yeast and water to make a dough and baking the dough (see col. 5 and the examples). The polydextrose is used in amount of 5-20% by weight and the emulsifier is used in an amount of 0-5%.

Dartey et al. do not teach adding fiber and enzyme and the emulsifier is not glycerol monostearate.

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Hay, Jr. et al. teach glycerol monostearate is a known emulsifier (see col. 10, lines 49-55)

The textbook “ The Encyclopedia of Chemical Technology “ teaches to add enzyme such as amylase to dough to improve volume, texture and keeping properties. Enzyme is added to bread to slow down the firming of bread. Proteolytic enzymes can also be used to reduce mixing time of dough and to make dough more pliable.

It would have been obvious for one skilled in the art at the time of the invention to add enzyme to the Dartey et al dough for the reasons taught by the textbook. It would also have been obvious to use glycerol monostearate as an emulsifier because it is a known emulsifier as shown by Hay, Jr. et al. The selection of the type of emulsifier is an obvious matter of choice. It would also have been obvious to add fiber to the dough to increase the fiber content of the product; it is known in the art to do this. The type of fiber selected is an obvious matter of choice. As to the difference in the amount of the ingredients used, this is not deemed patentably significant in absence of showing of criticality or unexpected result because it would have been obvious for one to vary the amounts depending on the properties desired.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Zimmerman et al. disclose reduced fat, low fat and no-fat baked goods.

Dartey et al. (4668519) disclose a method of making reduced calorie baked goods.

Hahn discloses a low-fat cereal grain food composition.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Mon-Fri from 6:30 to 4:00. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3601.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

March 13, 1998


LIEN TRAN
PRIMARY EXAMINER